

EXHIBIT 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT) ,
ANTITRUST LITIGATION

Master File No.
CV-07-5944 SC
MDL No. 1917

HEARING BEFORE SPECIAL MASTER MARTIN QUINN, JAMS
San Francisco, California
October 3, 2016
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Reported by:

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13 Also Present: Marlo Cohen, via telephone

1 San Francisco, California, Monday October 3, 2016

2 3:28 p.m.

3 - - -

4 THE COURT: Okay. Can we start getting the
5 names of the people who are on the telephone, please, if
6 you could give me your names slowly, that would be
7 great.

8 MR. BIRKHAUSER: Good afternoon, Your Honor,
9 Dan Birkhauser, Bramson, Plutzik, Mahler & Birkhauser.

10 MS. COHEN: This is Marlo Cohen here.

11 MR. STEWART: Good afternoon, this is Dennis
12 Stewart.

13 MR. DEVER: Good afternoon, this is Gerry
14 Dever.

15 THE COURT: From what firm?

16 MR. DEVER: From Fine, Kaplan and Black.

17 THE COURT: Okay. Thanks.

18 MR. BATTIN: Good afternoon, Your Honor, this
19 is Tim Battin of Straus & Boeis with Nate Cihlar of
20 Straus & Boeis as well.

21 MR. GOLDBERG: Good afternoon, Mr. Quinn.
22 This is Joe Goldberg in Albuquerque, New Mexico.

23 MS. McKENNA: Good afternoon, this is Liz
24 McKenna from Millberg, LLP.

25 THE COURT: Okay. Anyone else? All right.

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1 Good. Well, welcome, everybody, we'll start the
2 hearing -- oops, who just joined?

3 MS. MOORE: Theresa Moore.

4 MR. COOPER: Josef Cooper.

5 THE COURT: All right. Now we'll start the
6 hearing.

7 On Mr. Alioto's allocation, I guess, do you
8 want to make some opening comments?

9 MR. ALIOTO: Yes, please, if Your Honor
10 please. We have a fairly substantial record in this
11 matter, and in light of that substantial record, I think
12 I can be pretty brief on what we did. I'd just like to
13 highlight a few things and I would like to draw your
14 attention to our -- what we call the master declaration
15 or the main declaration which we filed in support of the
16 original motion for attorneys' fees. That bears --

17 THE COURT: Back in 2015?

18 MR. ALIOTO: Yes, sir, yes. And that bears
19 docket number 4071-1. And what we did in there, Special
20 Master, was give a summary of the case, start to finish.
21 Unfortunately, we're not finished, but from start to
22 around the time of preliminary approval, summarizing the
23 case and our involvement in it, and looking over the --
24 the declaration, I don't think we blew our horn as much
25 as we could have, and I'm afraid as a result of that

1 maybe the full scope of this case and what was involved
2 and what we did didn't come across to the district
3 court.

4 We -- that's -- I have nobody to blame for
5 that but myself, but I still think that this declaration
6 is the best indication of what was done here over the
7 past eight years.

8 It sets forth the major developments in the
9 case, and let's be perfectly clear about our
10 involvement. We were involved in every single thing in
11 this case from start to finish.

12 We're still involved. We're still leading the
13 support of the settlements. We're still in charge of
14 handling the fees. The case is still going on. There's
15 been a mass of filings in the wake of preliminary
16 approval. The case is still going ahead, full speed
17 ahead.

18 We have 14 appeals in the Ninth Circuit.
19 There is going to be further motion practice. There is
20 going to be briefing. There is going to be further --
21 going to be further work on -- on settlements. As you
22 know, we have that Chunghwa settlement that's on a
23 little different track.

24 The work goes on. And my office is doing it.
25 Leading it and doing it. That's what we've been doing

1 for the past eight years, certainly not all by ourselves
2 because these cases, as lead counsel, you're tasked with
3 getting the best people to do specific jobs and that's
4 what we've done.

5 And you -- you sit here and you get criticized
6 for bringing people into the case. It's characterized
7 as subcontracting things out, or sloughing things off.
8 It's bringing the best possible people into the case to
9 get the best possible result. That's what we've done
10 and continue to do.

11 This declaration, docket 4071, will show you
12 our complete involvement. And if there is any doubt,
13 because in going over the -- the declaration in detail,
14 sometimes when we're describing activities I don't make
15 the -- the extra statement, and we were doing it, but I
16 am telling you right now on this record, everything that
17 is described in that declaration my office was doing,
18 either myself, Ms. Capurro, Mr. Patane, or contract
19 people that we utilized to work on this case, from day
20 one until the time of preliminary approval.

21 Let me also say that this case -- and I'm not
22 going to bore you, you hear this all the time with the
23 difficulty of the case and how -- how hard we worked,
24 well, yes it was difficult and yes, we did work very
25 hard on it and got an excellent result. It's all in

1 here.

2 But this case is not one case. It's 20 cases.
3 And I don't think anyone who hasn't really been in the
4 trenches in one of these cases understands what that
5 means. And I'm afraid I didn't convey that impression
6 to Judge Tigar, maybe I did and maybe I didn't, but let
7 me try and be very brief and give you some sense of what
8 I mean by 20 cases.

9 It's a indirect purchaser class action
10 involving multi -- many states and many claims. Very
11 significant piece of litigation in itself. It's a
12 direct purchaser class action, very substantial piece of
13 litigation in itself.

14 It involved 13 direct action cases by very
15 substantial corporate plaintiffs, resellers, retailers,
16 people up the chain purchasing and selling tubes, 13
17 indirect -- 13 direct action plaintiffs.

18 It involved at its height, five state actions
19 by attorneys general, and I've dealt with all of these
20 people. You'll hear as part of these proceedings these
21 arguments about the California attorney general, well,
22 that's -- that was -- that's the half of it. I also
23 dealt with the attorneys general for State of Illinois,
24 Washington, Oregon -- just got off the telephone with
25 the attorney general for the State of Oregon Friday, as

1 a matter of fact. State of Florida, they had an action
2 at one time. And -- and one other, five AG actions, two
3 major class actions, 13 direct actions, that's 20
4 actions in one proceeding.

5 Let me give you an example of what that means
6 when you have 20 actions in one case. That means when
7 there are expert reports, which I was very heavily
8 involved in, especially the damages reports, time spent
9 on that, I can't begin to tell you what was involved in
10 that, especially on the expert -- the damage work.

11 There were 17 designated experts, four reports
12 per expert. By my count that's 68 expert reports. And
13 you don't have the luxury of looking at your expert and
14 seeing what your expert's doing and preparing your
15 expert; you have to have an understanding of what's
16 going on out there with all of the experts. Because
17 they're opining on the overcharge. The overcharge at
18 the top level, that's common to all the cases. And it's
19 very important that those experts are doing the same
20 thing and analyzing the same data so you don't come out
21 with experts arriving at 10 percent overcharges and
22 experts arriving at 30 percent overcharges. You need to
23 get people on the same page. I did that. And it is not
24 an easy task to do that with 20 separate actions.

25 That's an example of what I mean by this is

1 not a normal case. It's 20 cases. And the same can be
2 said for everything in this declaration I filed. When
3 you talk about setting up merit depositions there are
4 20 --

5 THE COURT: May I make a suggestion?

6 MR. ALIOTO: Yes.

7 THE COURT: We have limited time and, you
8 know, I have limited general awareness of how complex
9 these cases are. Be sure you focus on some of the
10 criticisms that people have made about your allocation.

11 MR. ALIOTO: I was going to wait to hear the
12 criticisms and then focus on them, Your Honor. I think
13 that -- I would rather proceed that way.

14 THE COURT: Well --

15 MR. ALIOTO: If you don't mind because, for
16 the most part, they're handled in the briefs, and I'd
17 just like to conclude this part on --

18 THE COURT: All right.

19 MR. ALIOTO: -- the work. And again, because
20 there has been some suggestion even in some of the
21 orders that we got a good result because there was a lot
22 of damage involved, we got a good result because there's
23 a lot of sales and a lot of commerce involved.

24 I don't think that's fair to say. I really
25 don't think that's fair to say. If you look at this

1 declaration, it will give you an idea, the fact
2 questions, the law questions, the amount of time and the
3 risk. And we were involved in every aspect of it, even
4 though I've neglected to say, we did this, we did that,
5 every other thing, every single one of the aspects of
6 the case we were involved, led it, oversaw it and were
7 hands-on, sleeves rolled up on it. That's all I want to
8 say as far as our affirmative work.

9 Secondly, on our allocation, how did we arrive
10 at the number we arrived at, the two-nine multiplier?
11 Well, we certainly didn't arrive at that or pull it out
12 of the air or say we needed that or say that's what
13 we're going to have.

14 How we arrived at that was we worked with all
15 of the firms in the case to arrive at what we thought
16 were fair numbers for them and we got feedback from
17 these firms as to what they thought were fair numbers
18 for us. And as part of that process, our number, our
19 multiplier number moved -- moved down in order to get an
20 allocation of this fee that we thought my dream or my
21 goal was to get 100 percent approval.

22 I put to one side the objectors, I don't count
23 them as part of this effort. This is -- I'm talking
24 about the people who were in the case and who are
25 pushing to get this case approved. And we did -- as I

1 explained earlier this morning my methodology to try and
2 get an agreement on this allocation, and I think it is
3 very telling and we -- we moved people, we moved people
4 around and we moved ourselves.

5 And I think it is very telling, Your Honor,
6 that after this process of the firms that are pushing to
7 get this settlement done, we have one firm,
8 Mr. Gralewski's firm, that has criticized, challenged
9 our allocation. One firm out of 150.

10 Now, again, putting to one side the objectors,
11 but again, I don't view them as part of this effort,
12 they're on a separate track, they have a separate
13 agenda. They are not -- they're not pushing for
14 settlement, they're pushing for other things. But I
15 think that that speaks pretty highly of not only our
16 efforts in the case, but our efforts in doing this
17 allocation to try and get a equitable result.

18 Now, I'll be the first --

19 THE COURT: Don't we have the McCullum
20 Hoagland firm, the Glancy Prongay firm and the Terrell
21 McCallum firm that have filed objections as well, and
22 aren't they part of your cooperative group?

23 MR. ALIOTO: Well, are they -- the point I'm
24 trying to make is there are people out there -- and let
25 me say this, there are also people in the group that

1 feel they should have been higher. And let me just say
2 a word about them. Let me kind of commend them because,
3 as I said, as we gave -- as we gave ground, as we came
4 down in our amounts, other firms came down in their
5 amounts because they put the objective of getting this
6 done above the objective of getting every last dollar.
7 And there are a number of firms in there that did that.
8 They're not necessarily happy, but they -- but they came
9 to a result to get this done.

10 Now, yes, there are other objectors, but
11 they're not so much in the objection of lead counsel is
12 getting too much; they're more along the line of I
13 should be bumped.

14 THE COURT: I see.

15 MR. ALIOTO: Or he didn't do a good job with
16 me. The only real people that are taking on lead
17 counsel are the objector group and Mr. Gralewski.

18 I don't think I could really add to that, Your
19 Honor, and I don't want to say they -- they're happy
20 about it, or they're glowingly recommending it because
21 they feel they should have had more, a lot of these
22 firms.

23 The -- the aggregate award, you know, the
24 history of the -- of the award, and people didn't come
25 out where they felt they should have come out and where

1 we thought we had a strong argument under the facts and
2 the law where they -- where they should have been, they
3 didn't reach it. But they have moved on. They've taken
4 their awards and they want to get it done. And I think
5 you have to commend these people for doing that and
6 trying to get it done.

7 And as I say, it also reflects, I -- I
8 respectfully submit, it reflects very well on the job
9 that lead counsel did in the underlying case and in the
10 allocation. That's all I'd like to say for my opening,
11 Your Honor, thank you.

12 THE COURT: Okay. Let's go around the table.
13 Mr. Micheletti, anything to add?

14 MR. MICHELETTI: No.

15 THE COURT: Mr. Gralewski, anything beyond
16 what you've already said in your own hearing?

17 MR. GRALWESKI: Just one comment, Your Honor.
18 You know, to be clear, Kirby believes lead counsel
19 should have a higher multiplier than anyone else because
20 of the superior management and skill that they did bring
21 to the case, just not a multiplier that results in
22 29 percent of the fee for 16 percent of the work.

23 You look at some of the other core firms like
24 Kirby and Straus & Bois, and we are at 10 to 12 percent
25 of the fee for 10 to 12 percent of the work. And really

1 the objection centers on that. We're not disputing the
2 fact that -- that lead counsel did an exceptional job
3 with the case, just the -- those numbers are out of
4 whack.

5 THE COURT: Okay. Mr. Scarpulla?

6 MR. SCARPULLA: Yes, Your Honor.

7 Your Honor, I've said most of it in our
8 papers. I'll make just a couple of observations here.
9 Mr. Alioto claims that his firm was involved in
10 everything. All the firms in this case were involved in
11 everything. Let's not kid each other about that. The
12 people who did the work in this case did the substantive
13 work, the antitrust lawyers who did the substantive work
14 were at Zelle, were at Kirby McInerney, were at Straus &
15 Bois and other firms, and those were the people who did
16 the work across the boards.

17 So I'm not talking about a firm that did a
18 specific assignment. I'm talking about firms that had
19 responsibility across the boards. Those are the three
20 firms that ought to get the highest multiples.

21 THE COURT: Are you saying that the Trump
22 Alioto folks did not -- were not involved in almost all
23 the work and management?

24 MR. SCARPULLA: They were not.

25 THE COURT: Do you want to --

1 MR. SCARPULLA: I don't think they took any
2 depositions. I don't think they argued any significant
3 motions. I don't think they did any significant
4 pleading -- producing pleadings. I think those were
5 other firms.

6 The expert witness stuff was done by Chris
7 Micheletti who's sitting here, and Craig Corbitt at
8 Zelle. That's who -- they were responsible for that.

9 Most of the firms -- I've looked at
10 Mr. Alioto's time sheets and I have to tell you
11 something, and I've looked at Ms. Capurro's time sheets,
12 they're all blocked billed, they're all 20.25 hours, and
13 you can't tell what any of them did on any specific task
14 because it's not separated out.

15 And if you look at them, for example, let me
16 just give you an example here, on January 17th, 2014,
17 Mr. Alioto is charging the class at about \$800 an hour
18 to organize files. Now that's not something that a lead
19 counsel does; they don't organize files. They have
20 2,161 hours of meetings, attorney meetings, and most of
21 them are with themselves.

22 You go through their time sheets and you'll
23 see that Mr. Alioto talks to Mr. Patane, Mr. Patane,
24 talks to Ms. Capurro and Ms. Capurro talks to Mario
25 Alioto. That's not something that should be rewarded,

1 Your Honor. What gets rewarded is people who do
2 substantive work, like taking the key depositions, like
3 arguing the class motion. Mr. Micheletti and Ms. Zahid
4 argued that right here in this room in front of Your
5 Honor. Mr. Alioto didn't argue that case. They didn't
6 argue any of the Summary Judgment motions. They didn't
7 argue them. They filed pieces of paper but I don't
8 think any of those end-of-the-case summary judgment
9 motions actually were heard. I just don't remember them
10 being heard.

11 And I don't think the motions in limine were
12 ever argued in front of the judge. I don't think so.
13 If they were, I -- I wasn't -- I didn't go to them
14 because I didn't know about them.

15 So when you -- if you look at the time sheets,
16 and that's what I respectfully suggest you -- somebody
17 needs to do, whether it's Your Honor or whether you hire
18 somebody to do it, but if you'll look at Judge Wilkins'
19 decision in the -- in Keller against National Collegiate
20 Athletic Association, she goes through the entire method
21 for allocating fees in a case where she has already
22 awarded a gross percentage of the fund fee. And she
23 looks at everybody's time sheets.

24 THE COURT: Do you have a cite for that, just
25 to make my life easier?

1 MR. SCARPULLA: I only have a Westlaw cite,
2 I'm sorry.

3 THE COURT: That will do.

4 MR. SCARPULLA: 2015 Westlaw 8916392.

5 THE COURT: Great.

6 MR. SCARPULLA: It is an exhaustive opinion
7 about allocating fees and what is excessive time and
8 what isn't.

9 Do you know in this case, Your Honor, there
10 were 72,000 hours spent reviewing documents. 72,000
11 hours total. If you're going to charge that at anywhere
12 near 350 to \$400 an hour, with a multiple, you're
13 talking about 30 to \$40 million being paid for looking
14 at documents.

15 I mean, the idea that people are doing that
16 anymore is beyond me. You put these things in a
17 software system, it gives you -- you know, it will give
18 you documents where you can -- where you can search for
19 specific words and you can do it in multiple languages.
20 It's not like you have to have somebody translating the
21 document, all the documents. You pick out the ones you
22 think are important and you have those translated. And
23 you can get these things translated for \$35 at a regular
24 old translating organization instead of paying some
25 lawyer \$450 an hour to translate a Japanese document.

1 And anyway, let me just say something about
2 the attorneys general in Illinois, Washington, and
3 Oregon. I dealt with them in LCDs and we worked out a
4 deal for them in LCDs.

5 When they popped up in this case, Mr. Alioto
6 called me up and asked me what I did with them in LCDs,
7 and how to handle it, and I told him and that's when he
8 did, and now he's claiming he knows how to handle the
9 AGs.

10 I think, Your Honor, that there is an audit
11 report that some folks did in this case on the
12 allocation of the fees. I believe there to be such a
13 document and I would respectfully request that that be
14 made part of the record because that will tell Your
15 Honor what was initially suggested and what, if
16 anything, was changed there.

17 And then there is also the question of whether
18 there was an agreement with Mr. Alioto and Zelle where
19 Zelle would act as essentially a colead counsel with
20 Mr. Alioto. That's relevant in this proceeding for
21 allocating fees for the following reasons: If in fact
22 it is correct that Mr. Alioto had to have Zelle do the
23 work of a lead counsel, then his firm should not be
24 compensated with a multiple that is only for lead
25 counsel work, that's number one.

1 Number two, it also is important because if
2 that is going to be applied, if it is enforceable, which
3 I believe it may be, then it affects -- then it affects
4 the Zelle time and it certainly affects my time because
5 I get the same multiple.

6 And so, therefore, that document, it's a
7 series of e-mails, I understand, ought to be made part
8 of the record so that if there is any -- if we have to
9 talk about it in front of Judge Tigar, he's -- it's in
10 the record. And if it goes up on appeal to the Ninth
11 Circuit, it's in the record.

12 THE COURT: What about that, Mr. Alioto, while
13 we're just pausing on that point, you know, given my
14 desire to not hide the ball here, I know we haven't
15 looked at that other report up to now, is it about time
16 we did?

17 MR. ALIOTO: I'm sorry, Your Honor, there was
18 an audit report on expenses which is in the record.

19 THE COURT: No, I thought there was an audit
20 committee that you put together of various counsel who
21 looked at the time records of the different firms and
22 made some adjustments or judgments.

23 MR. ALIOTO: Yes, there's -- there's no report
24 as such. What happened was we set up a criteria for
25 review of time records, and the half a dozen firms or

1 so, we split up all of the firms, and about six or seven
2 firms reviewed all of these time records.

3 I -- it was a -- kind of a one-on-one with the
4 various firms and there was no formal audit report and
5 it was some negotiation and some back and forth and
6 working on it. I think that's what Mr. Scarpulla is
7 talking about.

8 But in terms of a report or an audit report,
9 there was nothing. There were just changes in the
10 lodestar, reductions in the lodestar which we then
11 submitted to the court.

12 THE COURT: Okay. Well, the Court is not
13 interested in looking at a lot of handwritten scraps of
14 paper with notes of a telephone conversation with this
15 firm or that firm, but was there anything beyond that,
16 any minutes of meetings, any compilations, any, you
17 know, arithmetic calculations, anything that would give
18 us some insight into that? Ms. Capurro wants your
19 attention.

20 MR. ALIOTO: No, it would be more in the
21 nature of worksheets and work-up and interlineations and
22 correspondence from the firm handling another firm. It
23 was fairly fragmented. It wasn't in the nature of a
24 formal audit like the expense audit. That was formal.
25 And that -- that's been submitted, if that answers your

1 question.

2 THE COURT: Is there a file in your firm that
3 if I were to request, you know, give me all papers
4 relating to the audit of fees -- I'm not doing that, but
5 if I were to do that, could you walk in and grab a file
6 and hand it to me, fragmented though it may be?

7 MR. ALIOTO: I don't know that I could, but I
8 could certainly find that out when we adjourn here
9 today, I could certainly get an answer to that question
10 for you.

11 THE COURT: I only want things that are going
12 to be helpful to the Court. And, you know, these
13 adjustments have been made, the fee has been approved.
14 We are where we are and we don't need to create more
15 problems, but I -- I would be curious what form these
16 documents are in.

17 MR. ALIOTO: Okay. We can certainly get that
18 to you.

19 THE COURT: Okay. Go ahead, Mr. Scarpulla.

20 MR. SCARPULLA: Yes, Your Honor.

21 Your Honor, I understand that maybe
22 Mr. Micheletti has a copy of that audit report, so if
23 it's been circulated to people other than, you know,
24 yours truly, then I'd like to see it, make it part of
25 the record. Anyway --

1 THE COURT: Well, do you have it?

2 MR. SCARPULLA: I don't have it.

3 THE COURT: Oh.

4 MR. SCARPULLA: I only have an e-mail from
5 Craig Corbitt that tells me that Mario and Chris
6 Micheletti have it.

7 THE COURT: Mr. Micheletti, do you have a copy
8 of this elusive audit report?

9 MR. MICHELETTI: I do not.

10 THE COURT: All right. Go ahead,
11 Mr. Scarpulla, next point.

12 MR. SCARPULLA: And then, you know, the
13 agreement, the original agreement independent -- there
14 are two or three or four maybe e-mails early on where
15 they agreed that apparently Zelle would be a colead.
16 And then if that's the case, the fact that Mr. Alioto
17 didn't assign work to people at Zelle doesn't matter
18 because Zelle had the authority to do that. I'd like
19 that in the record.

20 THE COURT: I'm going to inquire about that,
21 but I want you to get your points in.

22 MR. SCARPULLA: Okay. All right. The other
23 thing that Mr. -- that nobody, I don't think, from
24 Mr. Alioto's firm has sworn -- and this is in a number
25 of cases, Your Honor -- that nobody said that the hourly

1 rate that is being charged to the class and therefore
2 part of the allocation is the normal hourly rates that
3 they charge their per diem clients.

4 THE COURT: Actually, Mr. Goldberg did say
5 that.

6 MR. SCARPULLA: Mr. Goldberg did, but he's the
7 only one that I know of. So that's something that Judge
8 Wilkin thought was of importance in an allocation.

9 THE COURT: Well, I'd have to go back and look
10 at those 2015 declarations, I'll just leave it at that.
11 I think that's a fair point and I need to look at those
12 2015 declarations.

13 MR. SCARPULLA: The other thing that
14 Mr. Alioto -- with the time records were in his original
15 declaration, not only was there 2,000 hours with
16 meetings among him and a group of lawyers primarily in
17 his own firm, but they have 8,800 hours of reviewing
18 documents. There are three lawyers in that firm. 8,800
19 hours.

20 They have 1,500 hours of reviewing expert work
21 and I believe that Mr. Micheletti and Mr. Corbitt at
22 Zelle did most of the expert work. And speaking of the
23 expert, did you know, Janet Ness (ph), she was our
24 expert. When we got close to trial, she was owed
25 approximately \$800,000.

1 I kept telling Mr. Alioto that he had to get
2 her paid, to send out assessments and get this woman
3 paid, because you can't let her get up on a stand when
4 she's owed money because then she's got an interest in
5 it. And it took me forever to get her paid, and I
6 finally had to keep -- I finally had to tell -- you
7 know, Mr. Corbitt and I were beside ourselves, because
8 we knew what the problem -- what would happen if she
9 didn't get paid and had to get on stand and testify and
10 somebody asked her that question.

11 Now, they have -- Trump Alioto has 6,500 hours
12 of motions and pleadings -- I'm sorry, I don't know --
13 my recollection is that the class motion was done by
14 Chris Micheletti and Judith Zahid and people at the
15 Zelle firm.

16 I know I looked it over and -- as it was going
17 along and Craig Corbitt may have too, but I think the
18 heavy lifting was done by them, maybe with help from --
19 I don't know whether Kirby McInerney was involved in
20 that, or whether Straus & Bois were, but certainly Zelle
21 was the one who did that.

22 Then the other thing we have here, Mr. Alioto
23 has 1,800 hours in settlement discussions. I firmly
24 believe that a very substantial portion of that has
25 nothing to do with settlement. It has to do with

1 fighting with the AG. That's not settlement. It's
2 different.

3 THE COURT: Your point, I think, if I get it
4 correctly, is that the -- the Alioto firm was lead
5 counsel, but didn't do any of the really important
6 substantive work on the case; and number two, has
7 charged a bunch of hours for work that you would
8 characterize as, you know, not the really significant
9 work --

10 MR. SCARPULLA: Administerial things.

11 THE COURT: -- that moved the case along.

12 MR. SCARPULLA: Right.

13 THE COURT: So did you in your objection --
14 I'm sorry, because I haven't focused on your objections
15 since we're not hearing it until Wednesday, did you
16 propose a revised allocation?

17 MR. SCARPULLA: I did, Your Honor.

18 THE COURT: Okay. It thought you had. Al
19 right.

20 MR. SCARPULLA: It's Exhibit 3.

21 THE COURT: All right.

22 MR. SCARPULLA: I have nothing else, Your
23 Honor, unless you have questions of me.

24 THE COURT: Well, I do have a question about
25 this alleged agreement between your firm, Mr. Alioto and

1 the Zelle firm by which Zelle would act as colead
2 counsel, if not in name, at least in fact. What is
3 there to that?

4 MR. ALIOTO: Well, as Your Honor may recall,
5 early on in these proceedings you asked for fee sharing
6 agreements. Some fee sharing agreements were submitted
7 to Your Honor. And those are all that I am aware of. I
8 don't have any agreement. I think there were a couple
9 of agreements submitted to you, but I certainly don't
10 have any agreement like that. I'll -- so that -- I hope
11 that responds to that question.

12 THE COURT: So you have no agreement with the
13 Zelle firm that for some bizarre reason they will act as
14 colead counsel even though they're not called colead
15 counsel?

16 MR. ALIOTO: That's right.

17 MR. SCARPULLA: Your Honor, if I may, again,
18 Mr. Corbitt told me that he's got -- that he has those
19 documents and that he turned them over to Mr. Micheletti
20 and Ms. Zahid just recently.

21 THE COURT: Mr. Micheletti, if this isn't
22 revealing any attorney-client or anything like that, is
23 there anything to this allegation of Mr. Scarpulla's?

24 MR. MICHELETTI: No, there's not. I agree
25 with Mr. Alioto's characterization in the record and

1 there is no agreement.

2 THE COURT: Did Mr. Corbitt recently hand you
3 some hot documents?

4 MR. MICHELETTI: No. I had no discussions
5 with Mr. Corbitt about this case for some time.

6 THE COURT: He's still with the Zelle firm?

7 MR. MICHELETTI: Yes.

8 MR. SCARPULLA: Well, then, I'm going to ask
9 Mr. Corbitt, if you don't mind, to show up when it's my
10 turn.

11 THE COURT: All right. Let's get to the
12 bottom of it. I'll -- actually, Mr. Corbitt is entitled
13 to speak because the Zelle firm put in a written
14 objection -- or a written response.

15 MR. SCARPULLA: Right.

16 THE COURT: All right. Anything further,
17 Mr. Alioto?

18 MR. ALIOTO: Just, I'll say this.
19 Mr. Scarpulla, we have some issues with Mr. Scarpulla,
20 and he obviously has an agenda here. And let me do
21 this, I'll deny every -- almost every point he made.
22 They're not in the papers.

23 Your Honor may recall on class certification I
24 was sitting in this chair and you were sitting right
25 there and before that when Judge Legg was the special

1 master, Judge Legg was sitting right there and I was
2 sitting right here on all of the motions and I've
3 continued to argue motions in front of Judge Walker, and
4 been present at mediation sessions with Fern Smith,
5 argued in front of Judge Conti. So when Mr. Scarpulla
6 makes those kinds of claims, he just isn't well
7 informed. I won't go any further than that. Let's say
8 he isn't well informed.

9 And if you look at the time that my firm
10 devoted to this case and compare it to what was done in
11 the LCD case, which is in the record, we attached Your
12 Honor's allocation in the LCD case to our papers.

13 THE COURT: Brought back memories.

14 MR. ALIOTO: Yes, okay. This case was handled
15 in my view much more efficiently because there was only
16 one lead counsel. There weren't all those issues where
17 you have different lead counsels and different factions.
18 The time spent here was much, much more efficient than
19 in LCD.

20 And these other comments that Mr. Scarpulla
21 raises, I mean, he's just pulling things out of thin
22 air, really, to see what will stick, throwing things on
23 the wall. That's been happening over the course of
24 these proceedings, maybe over the last two years.
25 Accusations, you didn't put the -- you said somebody

1 contributed to the fund, he didn't contribute to the
2 fund. The next thing I have to do is go dig up the
3 authorization for that. Of course he did it. I put it
4 in a sworn declaration.

5 I think we need Mr. Scarpulla to substantiate
6 a lot of these statements first before raising them and
7 causing people to do a lot of work. I think we're at
8 that stage of these proceedings that you really, instead
9 of just coming in here and making statements that I
10 haven't been at hearings or that so many hours were
11 spent on document review, which is completely reasonable
12 when you compare it to LCD, making accusations about
13 secret deals on fee sharing, before he really makes
14 those kinds of accusations, and you'll note that many of
15 these accusations here aren't really in the papers, they
16 just kind of sprung at this hearing today.

17 To go back on to my affirmative case here,
18 Special Master, just let the record reflect that all of
19 those indications by Mr. Scarpulla, me talking to
20 Mr. Scarpulla to get advice how to deal with the AGs,
21 completely, absolutely wrong, never had any contact with
22 him.

23 I wouldn't talk to Mr. Scarpulla because he
24 didn't have assignments. He wasn't working on this
25 case; he was working on LCD. So let me just blanket

1 deny all of those assertions by Mr. Scarpulla and come
2 back to this point, the -- this affirmative point.

3 The spread between lead counsel in this case
4 and the other firms in the case was much narrower than
5 the spread in the LCD case. And I think that bears
6 mentioning as well, especially since in this case you
7 had one lead counsel, not two lead counsel with
8 factions. You had one lead counsel really doing the
9 work here.

10 And I think that that would support a larger
11 spread as the spread was in LCD. But you will see that
12 when you compare this spread to the spread in LCD
13 between the leads and the other firms, it's not that
14 wide a gap, which comes back to the fact that we
15 allocated money from the top down the chain in order to
16 get this thing done. I can represent that to you right
17 now.

18 We allocated money down the chain of firms to
19 get this done and, as a result, with the exception of
20 this fringe group, these objectors, we have one firm
21 within the case that has objected to our firm's
22 allocation. And I think that is probably the most
23 telling bit of information as to the fairness of this
24 allocation. Thank you.

25 THE COURT: Just one factual point, can you

1 clear up for me how much your firm contributed to the
2 common fund, the expense fund, apart from amounts that
3 came from early settlements?

4 MR. ALIOTO: Over a million dollars. It's in
5 the record.

6 THE COURT: Yeah.

7 MR. ALIOTO: A million-two, million-one,
8 something in that neighborhood.

9 THE COURT: And that is over and above the
10 amounts that you took from the early settlements?

11 MR. ALIOTO: Yes, that is out-of-pocket cash
12 money. Out of pocket at the time and a fee petition and
13 still out of pocket.

14 THE COURT: I mean, this may not be part of my
15 business, I mean, it seems a little out of -- out of
16 whack, I mean, that's -- why did you arrange it in a way
17 that your firm would put a million bucks out at risk,
18 and the next highest is, you know, something in the
19 \$120,000 range?

20 MR. ALIOTO: Because people --

21 THE COURT: And their -- there are firms in
22 this case that are much bigger and probably have more
23 money in the bank than you do.

24 MR. ALIOTO: That's right. Because raising
25 the money from the group, there was some sentiment among

1 the lawyers in the group and there are some people who
2 did not have the enthusiasm for the case, let me put it
3 that way. They were not quite as invested in the case
4 before the big settlements came in.

5 There were serious questions about the judge,
6 there were serious questions as far as getting a trial.
7 There were serious questions about how good the case
8 was, and I remember when the last payments were made
9 into that fund, up -- the last payments made by my firm
10 were at the time when the trial team came in and we had
11 discussions about all the things we needed to do and we
12 needed to do it quickly. I think this was around the
13 end of -- the end of December '14, early '15. We needed
14 money in the bank to finance the trial.

15 The war room, the rooms, just to have the
16 money, we were going to be doing the jury work and I
17 didn't have time, Your Honor, to send out letters and
18 get dribs and drabs from here and there, so I put it up
19 myself out of a receivable that I got from another case
20 and I put it up myself.

21 THE COURT: So was -- let's say more than
22 500 --

23 MR. ALIOTO: Yes.

24 THE COURT: -- thousand of your -- of your
25 amount of your total million dollar contribution put up

1 in the last five or six month of the case?

2 MR. ALIOTO: I don't know exactly how it broke
3 down, but there was a large demand for money late '14,
4 early '15, for the trial.

5 THE COURT: Okay. Mr. Scarpulla?

6 MR. SCARPULLA: If that's the case, when Your
7 Honor ordered Mr. Alioto to produce the Trump Alioto
8 underlying expense sheets, that was not on there. The
9 only payment that was on there was 170,000.

10 MR. ALIOTO: That's -- that's wrong again,
11 Your Honor. The audit -- the expense audit had to do
12 with out-of-pocket expenses for travel, subsistence, all
13 of that. That audit didn't have anything to do with
14 common assessments, those payments into the lit fund.
15 Those were the kinds of expenses Mr. Goldberg was
16 discussing earlier today that each of the firms
17 incurred. That was a separate item of the expenses. Do
18 you see how these assertions get made? They have no
19 bearing whatsoever to what actually happened.

20 THE COURT: So where are your contributions to
21 the common fund documented, just so I know where to look
22 in your September --

23 MR. ALIOTO: Yes.

24 THE COURT: -- 2015 declaration?

25 MR. ALIOTO: Yes.

1 THE COURT: An exhibit thereto?

2 MR. ALIOTO: Yes, it would be on my fee
3 declaration, which would have the hours, the categories
4 would be hours, and it would also have under oath as
5 part of my declaration the contributions for the money
6 to the litigation fund.

7 MR. SCARPULLA: Excuse me, that was the whole
8 point, Your Honor, because there -- when we asked for
9 this in front of Your Honor, we said it's in the
10 declaration, but there's no underlying evidence. And so
11 Your Honor entered an order that required Trump Alioto
12 to supply the underlying evidence of those contributions
13 to the assessment fund.

14 The one that they produced and which is in the
15 record only shows 170,000. There's no showing that a
16 million dollars was paid into any fund at any time at
17 all.

18 Now, I'm not saying it wasn't paid. I don't
19 know whether it was or not, but Your Honor ordered that
20 those accounting records from Trump be produced to show
21 that payment. They were never produced.

22 MR. ALIOTO: Mr. Scarpulla doesn't know,
23 again, he doesn't know what the proceedings were. The
24 expense audit, as Your Honor will recall --

25 THE COURT: That was a different -- that dealt

1 with different kinds of expenses.

2 MR. ALIOTO: Those different kinds of
3 expenses, and that was something that we did voluntarily
4 after Judge Tigar ruled -- we took another look at the
5 expenses and we audited those and knocked them down.

6 THE COURT: Mr. Scarpulla is talking about
7 something different that he says I issued an order. I
8 have no memory whether I --

9 MR. ALIOTO: Before we -- I beg your pardon.

10 THE COURT: -- did or not. But he says I
11 issued an order that told you to give me the
12 documentation fee or contributions to the common fund.

13 MR. ALIOTO: That's very simple. Let
14 Mr. Scarpulla produce that order to you.

15 MR. SCARPULLA: I think I have it, Your Honor,
16 so if you give -- I'll have to look.

17 THE COURT: There's probably a good shot
18 Ms. Capurro can clear this up. Can you?

19 MS. CAPURRO: I can read to you the part of
20 your order.

21 THE COURT: Which order are you talking about?
22 I issue a lot of orders.

23 MS. CAPURRO: Yes, it's the order on the
24 motion to compel time records, after Mr. Scarpulla and
25 Mr. Cooper moved for production of time records. I'll

1 have to get you the docket number in a second, because
2 I'm looking at the order that you submitted on -- from
3 JAMS and it didn't have a docket number. I'll get it
4 for you in one second, but I'll read first what it says.

5 Lead counsel shall recommend to the special
6 master by December 2nd, 2015, a process for enabling
7 him to spot-check a representative sampling of expense
8 receipts and other back-up for claimed expenses and
9 shall keep available all back-up for claimed expenses
10 for the special master's inspection on request.

11 And after that, we then made a proposal to you
12 on what, you know -- on how you would -- how you would
13 do this representative sampling, and that we would
14 conduct an audit of and collect expense receipts,
15 conduct an audit and present the results of that to you,
16 which we did.

17 And we also gathered all the back-up for
18 claimed expenses and offered those to you at your
19 request, but you didn't request -- once you reviewed our
20 audit report and the back-up materials we gave you, you
21 didn't request anything else.

22 THE COURT: I remember that, but that dealt
23 with hotel bills, plane fare, that kind of thing. It
24 didn't deal with contributions to the common fund.

25 MR. SCARPULLA: Right, and that's what we

1 asked for, contributions to the common fund.

2 MS. CAPURRO: You asked for them, but
3 Mr. Quinn did not order them. He never --

4 MR. SCARPULLA: That was specifically -- I
5 don't think I ever asked to see the underlying expenses.

6 THE COURT: All right.

7 MR. SCARPULLA: I asked to see the payments
8 into the fund, and when we were -- and when they were
9 paid.

10 MR. ALIOTO: He's asked for a lot of things,
11 but what he's saying now is something different. He
12 said there's an order. Let him produce the order, Your
13 Honor.

14 THE COURT: Okay. I will take care of this by
15 going back to look at the order Ms. Capurro refers to,
16 the requests that were made that generated that order.
17 If I feel I need anything more, I'll ask for it.

18 Okay. Anything further from anyone in the
19 room?

20 Last but not least, Ms. Kern.

21 MR. KERN: Thank you. I will be brief. I
22 just want to respond to some of the assertions being
23 made that lead counsel didn't have substantive ruling in
24 this case. And I believe I had a significant role or I
25 want to just give some details about --

1 MS. MOORE: Could that speaker please move
2 closer to the telephone, it's hard to hear.

3 MR. KERN: Yes. So as I was saying, I believe
4 I had a substantive role in this case and I can attest
5 from my own knowledge to lead counsel's role and I just
6 wanted to give a few examples to highlight that.

7 Lead counsel was involved in all aspects of
8 the case that I know of. I work closely with Mr. Alioto
9 and Ms. Capurro on a lot of matters. I don't have to
10 belabor the point that this was a demanding case that
11 took a long time and we worked together sometimes every
12 single day, on weekdays, on weekends, on evenings, all
13 the time. I spoke routinely with both of them.

14 Some of the examples include the briefs. The
15 briefs in this case were particularly important because
16 when we were before Judge Conti, he did not permit or
17 allow, I should say, oral argument. So the briefing was
18 particularly important, and I discussed strategy with
19 both Ms. Capurro and Mr. Alioto on some of these briefs,
20 particularly, for example, important briefs. And by the
21 way, also to some extent the class certification brief.

22 And Mr. Alioto routinely helped edit the
23 drafts. He didn't just subcontract them as some people
24 would imply. He worked on those. He and I would work
25 through the briefs and decide there were significant

1 issues that needed to be addressed. I also got a lot of
2 input from Ms. Capurro on evidence and on deposition
3 outlines that I did and on picking exhibits. This was
4 all a team effort. This was not just people who were
5 off doing their own thing.

6 And another example was on settlement
7 strategy. I was involved in settlement strategy, and we
8 had numerous communications about how much to settle for
9 and what -- writing mediation briefs and so forth. So
10 to say that lead counsel didn't have a substantive role
11 is just simply not true.

12 THE COURT: Okay. So Mr. Alioto, you know, we
13 ended up in this case with a situation where you had two
14 or three class counsel opposing the settlement,
15 objecting to fees and other matters. And as you've said
16 yourself, one of the major jobs of lead counsel is to
17 promote harmony and, you know, keep a united front.

18 And here we had a situation where it wasn't
19 just outside objectors objecting to the settlement, you
20 had, you know, in-house class counsel.

21 Do you think, looking back over the eight
22 years of this case, if you had to do it again, there was
23 a way to have avoided that?

24 MR. ALIOTO: I was working --

25 THE COURT: And related question, do you feel

1 you made sufficient efforts to keep the peace, make the
2 peace, avoid problems?

3 MR. ALIOTO: Yes. This case was run the right
4 way, it's evidenced in the result. We were dealing with
5 at one time 20 timekeepers at the Zelle firm.
6 Mr. Scarpulla didn't take a large role in that. He was
7 doing other things. He was involved in LCD.

8 I don't know how they make their staffing
9 decisions over at Zelle, but I was dealing with
10 Mr. Micheletti, I was dealing with Mr. Corbitt,
11 Ms. Zahid, Qianwei. I was dealing with a score of
12 lawyers over there.

13 I think the case was run properly. When it
14 came time for the trial you had Mr. Cooper who was not
15 involved in the case, and Mr. Scarpulla who was doing
16 other things. Yes, I think I made the right decision.
17 We needed the trial teams and there probably would have
18 been work for these people to do. They probably could
19 have been folded in in some way, maybe it would have
20 been better to fold them in, but I don't think you can
21 make the jump and say they should have been involved and
22 it -- it was detrimental to the case, no, absolutely
23 not.

24 The case was -- was handled and staffed and
25 done properly, and if you look at these fee allocation

1 proceedings and you compare them to the LCD case, I did
2 not want to have that type of a dynamic in this case.
3 And we didn't have it.

4 And it was -- I firmly believe that we did it
5 the right way and that was -- contributed to the good
6 result we got in an efficient manner, much less -- much
7 less time and expense than the LCD case.

8 THE COURT: That wasn't quite what I asked. I
9 mean, looking back, do you think you could have done
10 anything more to promote harmony and avoid the
11 disruption we've experienced in the settlement portion
12 of the case?

13 MR. ALIOTO: I was not aware of any
14 disharmony. I was aware of the case moving forward,
15 assignments being made, and work getting done and I
16 wasn't aware of any disharmony. That's part of the
17 problem that we're going to be discussing on Wednesday,
18 that these efforts were outside of the normal channels
19 and unbeknownst to me.

20 THE COURT: Okay. With respect to Wednesday
21 and also with respect to today's hearing, which we're
22 just winding up, I have on my desk a motion to strike
23 from Mr. Cooper. I have Mr. Alioto's opposition.

24 Mr. Scarpulla, do you happen to know if
25 Mr. Cooper intends to file a reply because I want to get

1 that thing decided.

2 MR. SCARPULLA: I'm sorry, Your Honor, I don't
3 know, but I believe he's on the telephone.

4 THE COURT: Mr. Cooper, you're on the phone,
5 are you going to file a reply on that motion?

6 MR. COOPER: Yes, Your Honor, I believe based
7 on your order it is due on Friday.

8 THE COURT: Okay. I issue my orders and then
9 I forget them. So what's today?

10 MR. ALIOTO: I believe it's due Wednesday.

11 MR. KERN: The 5th.

12 MR. ALIOTO: Wednesday, Your Honor.

13 THE COURT: Yeah, well, you might take another
14 look at that order, Mr. Cooper, and get it in whenever
15 the order says to get it in, thank you.

16 MR. COOPER: Yes.

17 THE COURT: Okay. Hearing nothing further,
18 we'll close this hearing. Thank you, everybody, very
19 much.

20 (Whereupon, the proceedings were
21 adjourned at 4:27 p.m.)

22 --oOo--

23

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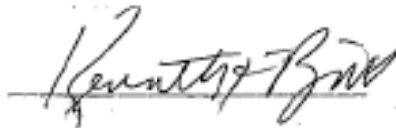
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CERTIFICATE OF REPORTER

I, KENNETH T. BRILL, a Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken in shorthand by me, at the time and place therein stated, and that the said proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said proceedings, nor in any way interested in the event of this cause, and that I am not related to any of the parties hereto.

DATED: 10/17/16

A handwritten signature in cursive script, appearing to read "Kenneth T. Brill", written over a horizontal line.

KENNETH T. BRILL

CSR 12797

[& - agreements]

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